



**U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**
Suite 700-1111 20th Street, N.W.
Washington, D.C. 20036

DATE PREPARED FEBRUARY 8, 1985

RE: JOHN A. OLIVER, 85-TLC-2

DECISION AND ORDER

THIS IS A DECISION IN RESPONSE TO THE REQUEST OF JOHN A. OLIVER FOR EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW, PURSUANT TO 20 C.F.R. #655.204(D), OF A DENIAL ON JANUARY 25, 1985 OF HIS APPLICATION FOR TEMPORARY LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATOR.

ON NOVEMBER 13, 1984, THE EMPLOYER, JOHN A. OLIVER, SUBMITTED AN APPLICATION FOR 10 SHEEPSHEARERS FROM NEW ZEALAND. THE REGIONAL ADMINISTRATOR, ON NOVEMBER 29, 1984, DETERMINED THAT THE APPLICATION WAS TIMELY AND CONTAINED CONDITIONS OF EMPLOYMENT THAT WOULD NOT ADVERSELY EFFECT U.S. WORKERS. APPEAL FILE (AF)-15,16) HE SET OUT IN A LETTER TO THE EMPLOYER THE PROCEDURE BY WHICH THE EMPLOYER COULD OBTAIN CERTIFICATION UNDER THE REGULATIONS. THIS LETTER CONCLUDED:

IN ORDER TO MAKE THE DETERMINATION ON WHETHER TO GRANT OR DENY THE CERTIFICATION 20 DAYS BEFORE THE STATED DATE OF NEED, YOU MUST WRITE AND LET ME KNOW BY JANUARY 21, 1985, WHICH IS 25 DAYS BEFORE THE ABOVE-LISTED CERTIFICATION DATE, THE RESULTS OF YOUR EFFORTS TO SATISFY THE ABOVE REQUIREMENTS. IF I DO NOT RECEIVE YOUR REPORT IN TIME, I MAY BE UNABLE TO MAKE THE CERTIFICATION REQUESTED IN YOUR APPLICATION. (AF-16). (EMPHASIS ADDED).

THE REGIONAL ADMINISTRATOR RECEIVED NO COMMUNICATION FROM THE EMPLOYER BY JANUARY 21, 1985. UNABLE TO ASSESS WHETHER THE EMPLOYER MADE GOOD FAITH RECRUITING EFFORTS, THE REGIONAL ADMINISTRATOR ISSUED A FINAL DETERMINATION DENYING:, TEMPORARY LABOR CERTIFICATION ON JANUARY 25, 1985. (AF-5, 6)

DISCUSSION

UNDER 20 C.F.R. §655.212(A) I MAY CONSIDER ONLY THE LEGAL SUFFICIENCY OF THE RECORD UPON WHICH THE DENIAL OF LABOR CERTIFICATION WAS BASED. A REVIEW OF THE RECORD IN THE PRESENT CASE REVEALS THAT THE REGIONAL ADMINISTRATOR PROPERLY DENIED THE LABOR CERTIFICATION.

THE REGULATIONS PROVIDE GUIDELINES FOR THE REGIONAL ADMINISTRATOR TO DIRECT AND ASSIST IN THE RECRUITMENT PROCESS. 20 CFR. §655.205. IF THE EMPLOYER FAILS TO MEET THE ASSURANCES REQUIRED BY 20 C.F.R. 1655.203, CERTIFICATION MUST BE DENIED. 20 C.F.R. §655.205(C) BECAUSE THE EMPLOYER'S FAILURE TO PROVIDE SPECIFIC RECRUITMENT RESULTS WITHIN THE DEADLINE PROVIDED BY THE REGIONAL ADMINISTRATOR CONSTITUTES A FAILURE TO PROVIDE THE ASSURANCES REQUIRED BY SECTION 655.203, THE REGIONAL ADMINISTRATOR WAS CORRECT IN DENYING LABOR CERTIFICATION.

ALTHOUGH THE EMPLOYER SUBMITTED A LETTER DATED JANUARY 29, 1985 ATTEMPTING TO EXPLAIN HIS RECRUITMENT RESULTS, THIS LETTER WAS NOT TIMELY AND ITS LATE SUBMISSION APPEARED TO BE WITHOUT GOOD CAUSE. MOREOVER, IT IS CLEAR FROM THE RECORD THAT THE REGIONAL ADMINISTRATOR WAITED UNTIL THE LAST POSSIBLE DATE TO ISSUE HIS DENIAL, GIVING AS MUCH DEFERENCE TO THE EMPLOYER AS THE REGULATIONS WOULD ALLOW. SEE 20 C.F.R. §655.205(C).

ORDER

FOR THE REASONS SET FORTH ABOVE, THE DETERMINATION OF REGIONAL ADMINISTRATOR DENYING THE EMPLOYER'S APPLICATION FOR LABOR CERTIFICATION IS AFFIRMED.

ROBERT S. AMERY
ADMINISTRATIVE LAW JUDGE

RSA: kat